

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

DARRYL ASHMORE,

Plaintiff,

vs.

Case No. 9:16-cv-81710-KAM

NFL PLAYER DISABILITY &
NEUROCOGNITIVE BENEFIT PLAN,

Defendant.

ANSWER TO PLAINTIFF'S COMPLAINT

Defendant, the NFL Player Disability & Neurocognitive Benefit Plan, answers the allegations set forth in Plaintiff's Complaint, paragraph by paragraph, as follows:

1. Paragraph 1 contains conclusions of law that require no response. To the extent a response is required, Defendant admits that Plaintiff's cause of action arises under ERISA.

Defendant admits the Court has subject matter jurisdiction over Plaintiff's cause of action.

Defendant admits that venue is proper in this Court.

2. Admitted.

3. Admitted, except that Defendant objects to the term "Defendant NFL" because the Defendant is not the NFL. Defendant is a legal entity totally separate from the NFL: It is a multiemployer plan established and maintained under the collective bargaining agreement between the NFL and the NFL Players Association, and is administered by a Board with three voting members appointed by the NFL Management Council and three voting members appointed by the NFL Players Association.

4. Admitted.

5. Admitted. To the extent Plaintiff relies on the Plan Document to support his allegations, Defendant relies on the terms of the Plan to speak for themselves.

6. Admitted.

7. Admitted.

8. Defendant currently lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 8.

9. Defendant currently lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 9.

10. Admitted.

11. Defendant admits that, in a series of letters dated October 9, 2015, Plaintiff was referred for three Plan neutral evaluations in accordance with the terms of the Plan. Defendant admits that the examinations were originally scheduled as stated in paragraph 11. Answering further, Defendant states that the letters informed Plaintiff that his application for disability benefits would be denied if he failed to attend the scheduled examinations. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

12. Defendant admits that, in a letter dated October 13, 2015, Plaintiff's counsel objected to the timing and location of Plaintiff's neutral examinations as originally scheduled. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

13. Defendant admits that NFL Player Benefits Office staff attempted to accommodate Plaintiff by rescheduling and relocating all three of the required neutral examinations, and therefore, in a letter dated October 14, 2015, Plaintiff was informed that the

scheduled neutral examinations would be rescheduled at his request. Defendant admits the same letter notified Plaintiff that he would receive additional information about the rescheduled examinations in a separate letter. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

14. Denied. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

15. Defendant admits that, in a letter dated October 14, 2015, Plaintiff's counsel objected to any neutral examination that required Plaintiff to travel. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

16. Defendant admits that, in a letter dated October 15, 2015, Plaintiff's counsel submitted an unsigned, October 15, 2015 letter from a Dr. Frank Conidi. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

17. Defendant admits that, in a series of letters dated October 16, 2015, Plaintiff was once again referred for three Plan neutral evaluations in accordance with the terms of the Plan. Defendant admits that the examinations were rescheduled as stated in paragraph 17. Answering further, Defendant states that the letters informed Plaintiff that his application for disability benefits would be denied if he failed to attend the scheduled examinations. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

18. Defendant admits that, after receiving notice of the rescheduled examinations on October 16, 2015, Plaintiff's counsel waited 10 days, until October 27, 2015, to send another letter once again objecting to the timing and location of the required neutral examinations. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

19. Admitted. Answering further, Defendant states that Plaintiff's counsel's October 27, 2015 letter was presented to the Disability Initial Claims Committee as requested by Plaintiff's counsel.

20. Defendant currently lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 20.

21. Admitted. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

22. Admitted. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

23. Admitted. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

24. Denied.

25. Admitted.

26. Denied.

27. Admitted.

28. Admitted. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

29. Defendant admits that, with Plaintiff's appeal, Plaintiff's counsel included copies of correspondence between himself and NFL Player Benefits Office staff. Defendant denies each and every remaining allegation in paragraph 29. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

30. Admitted. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

31. Admitted. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

32. Admitted. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendant relies on those documents to speak for themselves.

33. Denied.

34. Denied.

35. Defendant admits that Plaintiff's application for disability benefits was denied for failure to attend required medical examinations, and therefore the Plan administrator did not review or resolve the medical evidence submitted in support of Plaintiff's application.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

In addition to the responses set forth in paragraphs 1 through 44 of this Answer, Defendant denies each and every allegation of fact and conclusion of law in the Complaint not otherwise specifically admitted in this Answer, and Defendant denies that Plaintiff is entitled to the relief demanded in the Complaint or to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

The Plan administrator's decision was consistent with the terms of the Plan, supported by substantial evidence, and otherwise reasonable. Therefore, the decision was neither arbitrary and capricious nor an abuse of discretion, and it must be upheld.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is not entitled to an award of benefits or any of the other relief he seeks in this action. Plaintiff alleges, and Defendant admits, the Plan administrator did not review the medical evidence supporting Plaintiff's application for disability benefits. Therefore, if the Court overturns the administrator's decision, the Court should remand the matter to the Plan

administrator.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that judgment be entered in its favor and against Plaintiff, that the Court award Defendant all costs and fees incurred by it in defending against Plaintiff's claims, and that the Court grant it such other and further relief as the Court deems just and proper.

Dated: November 21, 2016

Respectfully submitted,

/s/ Brian D. Equi

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on this 21st day of November, 2016, the foregoing Answer To Plaintiff's Complaint was filed by CM/ECF, which will provide notice of the filing to counsel of record for Plaintiff.

/s/ Brian D. Equi

Brian D. Equi